

SPECIAL CIVIL SUIT NO. 530/2017**:: ORDER BELOW EXHIBIT - 5 ::**

- 1) Heard the Ld. Advocate for the plaintiff - Mr. Zakir Malek and considered the written arguments vide Exh.14 of Ld. Advocate for the defendant - Smt. S.S. Thakar.
- 2) As per the submission of the plaintiff one agricultural land bearing Block/Survey No.98 situated Village : Navapura, Taluka : Daskroi, District : Ahmedabad which is owned by the defendant. Defendant and plaintiff have entered into agreement to sale on dated 19/09/2012. As per the condition of agreement the price per Guntha would be Rs.1,11,000/- when sale deed shall be registered at that time land is measuring in whatever area would be final. The net payment will be paid by the plaintiff to defendant. When the agreement to sale was made at that time plaintiff paid Rs.2,61,000/- in cash and also paid Rs.2,50,000/- by cheque totaling to Rs.5,11,000/- has been paid by plaintiff to defendant against agreement to sale. Then after defendant was not ready for execution of registered sale deed and therefore, plaintiff issued a notice through his advocate to defendant but the defendant did not replied the said notice. Then after, on dated 01/05/2015 plaintiff gave Rs.1,00,000/- by cheque to the defendant and the defendant admitted the agreement of sale which was made in 2012. The defendant accepted Rs.1,00,000/- against the above made agreement to sale. After this written consent of defendant on 01/05/2015 he was again not ready to execute the register sale deed. Hence, plaintiff filed the present suit for specific performance and during the pendency of this suit, plaintiff prayed for

temporary injunction against the defendant, to restrain the defendant to make any type of transactions with regard to the suit property. The defendant has filed its written statement vide Exh. 11 and submitted his defence that he is not ready to sell suit property to plaintiff but as the defendant required money therefore, he borrowed money from the plaintiff and for the security purpose he executed Banachitthi in favour of plaintiff and both parties orally decided that whenever defendant repays the loan amount to plaintiff then after agreement of sale automatically will be cancelled. No any conditions is mentioned in agreement to sale and no such agreement to sale is registered before any authority. It is a family contract between parties. Defendant further submitted when the plaintiff issued notice he met the plaintiff and said that he is not ready to sell the suit land, and informed him that he can collect his loan amount. At that time plaintiff informed the defendant to he cannot talk about this issue at present as he was busy with some social work. Therefore, defendant did not replied the notice of the plaintiff. Defendant further submitted that on dated 01/05/2015 plaintiff come to him and gave cheque of Rs.1,00,000/- to him. The defendant did not asked for any amount from plaintiff but he forcefully handed over to him a cheque and at that time the defendant told the plaintiff that they had executed the agreement to sale orally. Defendant further submitted that it is the malafide intention of plaintiff to bring outdated agreement within the time limit. But at time the defendant didn't know her intentions, but thereafter when she filed the suit against the defendant then defendant came to know about her intentions. Defendant further submitted that the land is the agricultural land and defendant has cultivated this land. It is only the earning means of defendant therefore, defendant do not wish to sale this land. The defendant is ready to repay

Rs.6,11,000/- to the plaintiff or the defendant is ready to deposit such amount to Court therefore, the present suit and temporary injunction application of plaintiff is required to be rejected.

- 3) Plaintiff has submitted following documentary evidence in support of her contention.

Sr. No.	Particulars	Mark
1	Copy of Village Form No.7/12 of the suit land.	3/1
2	Copy of Village Form No.8-A of the suit land.	3/2
3	Copy of agreement to sale.	3/3
4	Copy of notice issued by plaintiff to the defendant.	3/4
5	Acknowledgement receipt of aforesaid notice at Sr.No.4.	3/5
6	Acknowledgement receipt of aforesaid notice at Sr.No.4.	3/6

Prima Facie Case :

- 4) Court has considered the oral arguments of plaintiff as well as written arguments of the defendant. As per the plaintiff she has entered into agreement to sale with defendant. Other side i.e., defendant submits that it is just a family contract which he executed for borrowing money from the plaintiff as a security purpose but he does not wish to sell the land to anybody. But looking to Mark. 3/3, in this contract defendant admitted to sell the disputed land to the plaintiff. It is not a family agreement but it is a agreement to sale. Although, it is not a registered agreement but both parties have signed the document and two witness have also signed it. Therefore, according to this contract it is *prima facie* appears that defendant entered into agreement to sale with the plaintiff to

sale the suit property. Hence, at this stage the argument of the defendant cannot be believed that the said agreement is a family contract which he executed for borrowing loan and for security purpose. Moreover, defendant also accepted Rs.1,00,000/- on dated 01/05/2015 and he accepted the agreement to sale which is executed previously and he has accepted Rs.1,00,000/- against this agreement to sale. Now it is very clear that two times defendant entered into agreement to sale and against which he accepted amount both times. Then it cannot be said that this is a informal agreement or family agreement because if the defendant do not wish to sale his suit property then how can he enter two times in agreement to sale regarding the suit land. The defendant took defence that on dated 01/05/2015 plaintiff forcefully handed over to him cheque of Rs.1,00,000/-. At this juncture the said defence is not believable by any sound mind people as nobody can force other person to keep money. Therefore, defendant's say that he do not want to sale the suit land even though, plaintiff forcefully handed over the cheque of Rs.1,00,000/- it cannot be believed without any evidence. At this juncture, if the application is not allowed then plaintiff suffers more than the defendant because defendant may sell this land to another party. Therefore, it is required to maintain status quo of the suit property in order to avoid of multiplicity of proceedings. Hence, plaintiff has a *prima facie* case.

Balance of Convenience :

- 5) If application will be rejected the defendant may sale this land to other person or defendant may make more agreement to sale with regard to the suit property or may cheat other party. Therefore, it is required to maintain status quo of the title of

the suit land. Therefore, defendant is required to restrain from entering into any transaction with regard to suit land. If the present application is allowed plaintiff's right will be protected at this juncture and defendant will not suffer more than plaintiff because at this juncture transformation of possession is not required, possession will remain with defendant but defendant must be restrained from making more transactions with regard to the suit property. Therefore, defendant will not suffer any damage or irreparable loss. Hence, balance of convenience is in favour of the plaintiff.

Irreparable Loss :

- 6) If the defendant may not be restrained from doing more transactions with regard to the suit land then there is a possibility that defendant will sell this land to other persons or enter into agreement to sale with regard to the suit property with other persons which will create multiplicity of proceedings as well as the plaintiff will also unnecessarily dragged in to such multiplicity of proceedings. Then after plaintiff has wasted much time and she is engaged in Court proceedings since long time and ultimately she lost her time, Civil right if the defendant may not be restrained from doing more transactions with regard to the suit land. It is resulted for irreparable loss to the plaintiff. Defendant may not suffer more because at this stage there is no requirement of transformation of possession, possession be remained with defendant. Defendant be restrained from doing any more transactions with regard to the suit land. Hence, he will not suffer more in comparison with plaintiff. Therefore, the factor of irreparable loss is in favour of plaintiff.

- 7) Plaintiff has prima facie case, balance of convenience and

irreparable loss in her favour hence, looking to the above following order is passed in the interest of justice.

::O R D E R ::

- 1) The plaintiff's application is hereby partly allowed.
- 2) Both parties are ordered to maintain status quo with regard to the suit property till one year or final disposal of the suit whichever is earlier.
- 3) No order as to costs.

Order pronounced in open Court.

Date : 06.07.2019

Place : Ahmedabad

A.V. Jani (P.S.)

[VANRAJSINH A. DHADHAL]
(UIC No.GJ00891)
Principal Senior Civil Judge
Ahmedabad (Rural) at Mirzapur.